

Amendment in the Nature of a Substitute

To H.R. 4194

(Showing the text ordered reported on July 11,
2000, by the Committee on the Judiciary)

Strike all after the enacting clause and insert the
following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Merger
3 Filing and Fee Elimination Act of 2000”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) Section 7A of the Clayton Act (15 U.S.C.
7 18a), as added by the Hart-Scott-Rodino Antitrust
8 Improvements Act of 1976, established for mergers
9 filing fees that remain unchanged since 1976 and
10 that are uniform in amount without regard to the
11 size of the merging persons.

12 (2) The Antitrust Division of the Department
13 of Justice and the Federal Trade Commission are
14 funded entirely from such fees that they collect.

15 (3) The vibrant economy of the Nation has
16 placed unprecedented demands on Federal enforce-

1 ment of the antitrust laws, and the Antitrust Divi-
2 sion and the Federal Trade Commission are in need
3 of greater resources to carry out their enforcement
4 activities.

5 (4) The amendments made by this Act to sec-
6 tion 7A of the Clayton Act will modernize the filing
7 fee structure by requiring large persons to pay a fair
8 share of the fees for filing the premerger notification
9 required by such section and by exempting small
10 persons from filing such notification.

11 (5) It is sense of the Congress that fees col-
12 lected under section 7A of the Clayton Act should be
13 equally divided between, and should be made avail-
14 able by permanent appropriation without fiscal year
15 limitation to, the Antitrust Division of the Depart-
16 ment of Justice and the Federal Trade Commission
17 for expenditure to carry out their activities.

18 **SEC. 3. MODIFICATION OF NOTIFICATION REQUIREMENT.**

19 Section 7A(a) of the Clayton Act (15 U.S.C. 18a(a))
20 is amended to read as follows:

21 “(a) Except as exempted pursuant to subsection (c),
22 no person shall acquire, directly or indirectly, any voting
23 securities or assets of any other person, unless both per-
24 sons (or in the case of a tender offer, the acquiring person)
25 file notification pursuant to rules under subsection (d)(1)

1 and the waiting period described in subsection (b)(1) has
2 expired, if—

3 “(1) the acquiring person, or the person whose
4 voting securities or assets are being acquired, is en-
5 gaged in commerce or in any activity affecting com-
6 merce; and

7 “(2) as a result of such acquisition, the acquir-
8 ing person would hold an aggregate total amount of
9 the voting securities and assets of the acquired
10 person—

11 “(A) in excess of \$200,000,000 (as ad-
12 justed and published for each fiscal year begin-
13 ning after September 30, 2004, in the same
14 manner as provided in section 8(a)(5) to reflect
15 the percentage change in the gross national
16 product for such fiscal year compared to the
17 gross national product for the year ending Sep-
18 tember 30, 2003); or

19 “(B)(i) in excess of \$50,000,000 (as so ad-
20 justed and published) but not in excess of
21 \$200,000,000 (as so adjusted and published);
22 and

23 “(ii)(I) any voting securities or assets of a
24 person engaged in manufacturing which has an-
25 nual net sales or total assets of \$10,000,000

1 (as so adjusted and published) or more are
2 being acquired by any person which has total
3 assets or annual net sales of \$100,000,000 (as
4 so adjusted and published) or more;

5 “(II) any voting securities or assets of a
6 person not engaged in manufacturing which has
7 total assets of \$10,000,000 (as so adjusted and
8 published) or more are being acquired by any
9 person which has total assets or annual net
10 sales of \$100,000,000 (as so adjusted and pub-
11 lished) or more; or

12 “(III) any voting securities or assets of a
13 person with annual net sales or total assets of
14 \$100,000,000 (as so adjusted and published) or
15 more are being acquired by any person with
16 total assets or annual net sales of \$10,000,000
17 (as so adjusted and published) or more.

18 In the case of a tender offer, the person whose voting secu-
19 rities are sought to be acquired by a person required to
20 file notification under this subsection shall file notification
21 pursuant to rules under subsection (d).”.

22 **SEC. 4. MODIFICATION OF NOTIFICATION FILING FEES.**

23 Section 605 of title VI of Public Law 101–162 (15
24 U.S.C. 18a note) is amended—

25 (1) by inserting “(a)” after “SEC. 605.”,

1 (2) in the 1st sentence—

2 (A) by striking “at \$45,000” and inserting
3 “in subsection (b)”, and

4 (B) by striking “Hart-Scott-Rodino Anti-
5 trust Improvements Act of 1976” and inserting
6 “section 7A of the Clayton Act”, and

7 (3) by adding at the end the following:

8 “(b) The filing fees referred to in subsection (a)
9 are—

10 “(1) \$45,000 if the aggregate total amount de-
11 termined under section 7A(a)(2) of the Clayton Act
12 (15 U.S.C. 18a(a)(2)) is less than \$100,000,000 (as
13 adjusted and published for each fiscal year begin-
14 ning after September 30, 2004, in the same manner
15 as provided in section 8(a)(5) of the Clayton Act (15
16 U.S.C. 19(a)(5)) to reflect the percentage change in
17 the gross national product for such fiscal year com-
18 pared to the gross national product for the year end-
19 ing September 30, 2003);

20 “(2) \$125,000 if the aggregate total amount
21 determined under section 7A(a)(2) of the Clayton
22 Act (15 U.S.C. 18a(a)(2)) is not less than
23 \$100,000,000 (as so adjusted and published) but
24 less than \$500,000,000 (as so adjusted and pub-
25 lished); and

1 “(3) \$250,000 if the aggregate total amount
2 determined under section 7A(a)(2) of the Clayton
3 Act (15 U.S.C. 18a(a)(2)) is not less than
4 \$500,000,000 (as so adjusted and published).”,

5 (4) by striking “States.” and inserting
6 “States”, and

7 (5) by adding a period at the end.

8 **SEC. 5. INFORMATION AND DOCUMENTARY REQUESTS.**

9 Section 7A(e)(1) of the Clayton Act (15 U.S.C.
10 18a(e)(1)) is amended—

11 (1) by inserting “(A)” after “(1)”, and

12 (2) by inserting at the end the following:

13 “(B)(i) The Assistant Attorney General and the Fed-
14 eral Trade Commission shall each designate a senior offi-
15 cial who does not have direct responsibility for the review
16 of any enforcement recommendation under this section
17 concerning the transaction at issue, to hear any petition
18 filed by such person to determine—

19 “(I) whether the request for additional informa-
20 tion or documentary material is unreasonably cumu-
21 lative, unduly burdensome, or duplicative; or

22 “(II) whether the request for additional infor-
23 mation or documentary material has been substan-
24 tially complied with by the petitioning person.

1 “(ii) Internal review procedures for petitions filed
2 pursuant to clause (i) shall include reasonable deadlines
3 for expedited review of such petitions, after reasonable ne-
4 gotiations with investigative staff, in order to avoid undue
5 delay of the merger review process.

6 “(iii) Not later than 90 days after the date of the
7 enactment of the Small Business Merger Filing and Fee
8 Elimination Act of 2000, the Assistant Attorney General
9 and the Federal Trade Commission shall conduct an inter-
10 nal review and implement reforms of the merger review
11 process in order to eliminate unnecessary burden, remove
12 costly duplication, and eliminate undue delay, in order to
13 achieve a more effective and more efficient merger review
14 process.

15 “(iv) Not later than 120 days after the date of enact-
16 ment of the Small Business Merger Filing and Fee Elimini-
17 nation Act of 2000, the Assistant Attorney General and
18 the Federal Trade Commission shall issue or amend their
19 respective industry guidance, regulations, operating manu-
20 als and relevant policy documents, to the extent appro-
21 priate, to implement each reform in this subparagraph.

22 “(v) Not later than 180 days after the date the of
23 enactment of the Small Business Merger Filing and Fee
24 Elimination Act of 2000, the Assistant Attorney General

1 and the Federal Trade Commission shall each report to
2 Congress—

3 “(I) which reforms each agency has adopted
4 under this subparagraph;

5 “(II) which steps each has taken to implement
6 such internal reforms; and

7 “(III) the effects of such reforms.”.

8 **SEC. 6. CALCULATION OF TIME PERIODS.**

9 Section 7A of the Clayton Act (15 U.S.C. 18a) is
10 amended—

11 (1) in subsection (e)(2), by striking “20 days”
12 and inserting “30 days”, and

13 (2) by adding at the end the following:

14 “(k) If the end of any period of time provided in this
15 section falls on a Saturday, Sunday, or legal public holiday
16 (as defined in section 6103(a) of title 5 of the United
17 States Code), then such period shall be extended to the
18 end of the next day that is not a Saturday, Sunday, or
19 legal public holiday.”.

20 **SEC. 7. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall
22 take effect on October 1, 2000, or the 1st day of the 1st
23 month that begins more than 30 days after the date of
24 the enactment of this Act, whichever occurs later.